

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DAVID HOPKINS PLEMONS,)
)
Plaintiff,)
) **NO. 3:18-cv-00845**
v.)
) **JUDGE CAMPBELL**
WARDEN WASHBURN, et al.,) **MAGISTRATE JUDGE FRENSELEY**
)
Defendants.)

ORDER

Pending before the Court is the Magistrate Judge's Report and Recommendation (Doc. No. 33), recommending the Court deny Defendant Brun's Motion to Dismiss (Doc. No. 27). In considering the Motion, the Magistrate Judge rejected Defendant's argument that Plaintiff's Complaint and its attachments establish Plaintiff's grievance as untimely, and therefore, Plaintiff's claim should be dismissed for failure to exhaust administrative remedies. The Magistrate Judge explained that the Complaint alleged timely filing of a grievance, and in considering a motion to dismiss under Fed. R. Civ. P. 12, the allegations of the Complaint are to be accepted as true.

In his Objection (Doc. No. 36) to the Report, Defendant Brun argues that the copy of the grievance attached to the Complaint establishes Plaintiff's failure to timely exhaust administrative remedies. It is not clear from the allegations of the Complaint, however, that the attachment cited by Defendant (Doc. No. 1, at p. 12 of 20) was the first or only grievance related to the episode in question. Thus, the factual finding Defendant seeks to have the Court make is not evident from the Complaint and its attachments, and therefore, dismissal under Rule 12 is unwarranted. *See, e.g.*,

Seaton v. TripAdvisor LLC, 728 F.3d 592 (6th Cir. 2013); *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). Having fully considered Defendant's objection, the Court concludes it is without merit, and the Report and Recommendation should be adopted and approved. Accordingly, Defendant Brun's Motion to Dismiss (Doc. No. 27) is **DENIED**.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE